

Attorney's Docket No. 1025200-000042Application No. 10/729,999

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REMARKS

A Petition for Extension of Time (three months) with the appropriate fee is being filed herewith. Also, in view of the shortness of time a Notice of Appeal is being filed herewith in order to provide the Examiner an adequate time to consider this submission.

It respectfully is requested that the rejection under 35 U.S.C. §102(b) as set forth in the Official Action be reconsidered. For the reasons set forth hereafter, clearly no sound basis is urged to exist for the continued rejection of the Application.

It very recently has been determined that early plant availability information to the public outside of the United States that was supplied in the past in good faith is in error and was not accurately presented to the U.S. Patent and Trademark Office. For instance, the following was previously stated in good faith at Page 4 of the August 26, 2002 Amendment in parent U.S. Plant Patent Application No. 09/791,738:

"It is understood that plants of the 'Inoveris' cultivar were first placed in the hands of the public in France during July, 1999".

Accurate information concerning the first date of plant availability to the public has recently reached the undersigned attorney and now is being supplied to the Examiner. Applicant now states the following on information and belief:

- (1) Plants of the 'Inoveris' cultivar were first made available to the public anywhere in the world in the United Kingdom. This took place during May 2000 and less than one year prior to the February 26, 2001 filing date of Applicants' parent U.S. Plant Patent Application.

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- (2) During July 1999 plants of the 'Inoveris' cultivar were provided to a limited number of Applicant's professional licensees in France for the sole purpose of creating mother plants for use to produce 'Inoveris' plants for future release to the public in France. The first release of 'Inoveris' plants to the public in France first took place during 2001.
- (3) The French publications (a) "Sapho Infos" four-page leaflet (October 1999) that was submitted on August 26, 2002, and (b) "Andre Briant Jeunes Plants, Tarif Général, Saison 1999/2000" (July 1999) that was submitted July 19, 2005, are properly characterized as advertisements designed to promote awareness of the 'Inoveris' cultivar as being a new plant that will be released in France in the future. No such plants were available to the public in France until 2001.

Accordingly, any publications concerning the 'Inoveris' cultivar that appeared more than one year prior to the Applicant's effective filing date of February 26, 2001 were non-enabling. The continued rejection of the Application under 35 U.S.C. §102(b) would be lacking a sound legal basis. The issuance of a formal Notice of Allowance is urged to be in order and respectfully is requested.

If there is any remaining point that requires clarification prior to the allowance of the Application, the Examiner is urged to telephone the undersigned attorney so that the matter can be discussed and promptly resolved.

Respectfully submitted,

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